

**BOARD OF ZONING APPEALS**  
**MINUTES**  
**January 24, 2006**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on January 24, 2006, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following board members were in attendance:

ERMA MARKHAM, BICKLEY FOSTER, DWIGHT GREENLEE, and JUSTIN GRAHAM

The following board members were absent:

MICHAEL GISICK resigned

JAMES RUANE absent

STEVEN ANTHIMIDES absent

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

SHARON DICKGRAFE – City of Wichita, Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

YOLANDA ANDERSON, Recording Secretary.

DALE MILLER, Current Plans Manager

**MCNEELY** We have had a resignation Michael Gisick because he has been appointed to the MAPC.

**FOSTER** For the record, we have a vacancy due to Gisick resignation.

**FOSTER** First item on the agenda is the minutes. You have a revised copy of the minutes in front of you. I had a discussion with Yolanda and she had been working under the assumption or idea of summarizing more of the regulation as to not have a long copy. I am not adverse to that but it began to affect the motions and I asked her to look at them again.

**FOSTER** Do I have a revised copy?

**ANDERSON** Yes, everyone has been handed a revised copy. The revised copy has the minutes printed on both the front and backside.

**FOSTER** The original one looked as though I made a lot of motions and it did not have seconds in order to make it more reduced. Our bylaws talked about having motions moved and seconded. You have revised only the motions, Yolanda?

**ANDERSON** Yes, I went in and revised all of the motions to show where you recommended the motion, the person who motioned, the person who seconded and how it carried.

**FOSTER** Does anyone want to take a moment to look at it? Are there any questions?

**GREENLEE** I moved that the minutes of our previous meeting be approved as modified and previously discussed in this meeting.

**MARKHAM** Seconded

Motion carried 4-0

**FOSTER** We will look at our first case BZA2005-00085. This is a variance to increase the height by 8 feet to allow a 20-foot sign on Kellogg just south of the CBD (Central Business District). Did everyone get the additional mail-outs regarding this case?

**GREENLEE** Yes

**FOSTER** We will follow with staff first, then the applicant and then anyone who wishes to speak.

**MCNEELY** Good afternoon board members, I am Jess McNeely, Planning Staff and thank you Mr. Foster for pointing out the additional memos that were sent out and I apologize for the typographical errors that went with that mail-out.

**BACKGROUND:** The legal non-conforming off-site sign at the application area was originally built as a legal, permitted sign. A zone-change to “CBD” Central Business District made the sign non-conforming, as off-site signs are not permitted in the CBD district; the property owner did not initiate this zone change. The property owner retains the legal non-conforming right to the off-site (or billboard) sign. Also following the construction of this sign, Kellogg was elevated, making the sign less visible. If the sign were not legal non-conforming, the Sign Code would allow elevation of the sign, to 20 feet above the Kellogg rail, by administrative adjustment. The applicant submitted the attached letter dated December 15, 2005, addressing how this request meets the variance criteria.

**ADJACENT ZONING AND LAND USE:**

NORTH	“CBD”	Warehousing, contractor yard
SOUTH	“LI”	Elevated freeway, skateboard park, warehousing, salvage
EAST	“LI”	Industrial uses (Wichita Bindery)
WEST	“CBD”	Automobile service garage

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the applicant’s property was rezoned by an action not initiated by the applicant, creating the legal non-conforming use. Property immediately south and west of this site retained “LI” Limited Industrial zoning, which permits off-site (billboard) signs. Also, Kellogg was elevated after this sign was built, limiting the visibility of the sign.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties are used primarily for commercial and industrial purposes and are located along a state highway where billboards are common. The requested variance would not significantly increase the impacts of the billboard on adjacent properties.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the sign regulations would constitute an unnecessary hardship upon the applicant. The sign became legal non-conforming as a result of a zone change not initiated by the applicant. Likewise, elevation of Kellogg made the sign less visible, another action over which the applicant had no control. If the sign is to remain legal non-conforming, staff's opinion is that the applicant should not be penalized for actions over which they had no control.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the billboard is not significantly out of scale and the requested variance does not detrimentally impact uses or projects of public interest.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the billboard reasonably balances the need for the sign with the preservation of the visual qualities of the community.

**RECOMMENDATION:** Should the Board determine that the conditions necessary to grant the variance exist, then it is the recommendation of the Secretary that a variance for increased permitted height from 41.6 feet to 49 feet for a legal non-conforming off-site sign be GRANTED subject to the sign complying with all other regulations of the Sign Code. There is a copy of the proposed resolution at the chairman place. Are there any questions of staff on this case?

**FOSTER** In the Sign regulation in relationship to a legal non-conforming use, does it have any limitation on how much change can occur? Do you recall anything that limits that?

**MCNEELY** The sign code as it addresses legal non-conforming billboards, will only allow you to alter a billboard if you are reducing the size of that billboard. That is the only method by which you can alter a legal non-conforming billboard under the sign code.

**FOSTER** I am sure I know what the word alter means in that case, is there any limitations to the alterations?

**MCNEELY** It can be a structural alteration, as I understand it an alteration that affects the size of the sign face and the only way that alteration can take place under the sign code is under the administrative adjustment that would reduce the size of the face. So in other words, if you have a legal non-conforming sign, the only way you can alter that sign is to make it less legal non-conforming in that the sign area will be smaller.

**FOSTER** Does this mean that it will still remain legal non-conforming if this was approved?

**MCNEELY** Yes, This is a variance request of the sign code to allow it to be elevated to 20 feet above the rail of Kellogg. This is not a use variance request of the zoning code that would prohibit offsite signs as a land use. So it will remain a legal non-conforming use under it's "CBD" Central Business District zoning.

**FOSTER** One other question? No particular conditions attached here. It talks about complying with other regulations of the sign codes here, is that what you are saying?

**MCNEELY** Yes, this would not permit them to increase the sign face of their sign. All this variance would do is elevate this sign.

**FOSTER** Are there any other question to Jess? You are getting off easy Jess. I will call on the applicant.

**Greg Ferris,** I represent Clear Channel of Outdoor Advertising. David Mollenhagen from Clear Channel is here if you have any specific questions. He is willing to address and answer those questions. I do not have much to add to Jess's presentation. I believe he was very concise in going through the five hardships. We outline those in our letter and we agree with his analysis that it is a unique situation that was not brought on by any action of the applicant. There will be no impact to the adjacent property as the adjacent property is primarily industrial and primarily the use is industrial as well. It certainly creates a significant hardship. You did not have the opportunity to see the west face of this billboard that particularly causes a problem, as the highway is a little higher as it starts to slope downward. It does create a hardship on the applicant if this is not approved. We believe that it does not have a detrimental impact on any of the public interest and that we comply with the spirit and intent. In fact, if the zoning had not been changed by the city, many years ago, this would not be necessary. The sign code intent of that was to change this so I am not going to take any more time with this. We are willing to go into more detail if we need to for questions.

**FOSTER** Mr. Ferris, you are willing to take a chance with four members up here knowing it take four unanimous votes?

**FERRIS** I am willing to take that chance. I believe the board is reasonable.

**FOSTER** Any questions Mr. Ferris? Do you recall the other sign, a rather large sign that was put in before? Did you handle that one?

**FERRIS** That was actually put in after that sign. Yes, I did handle that sign.

**FOSTER** On the railroad?

**FERRIS** Right, that was where the City told them that they did not need a permit, then determined, at a later date, that they did need permit after it was already constructed.

**FOSTER** Where is it in relationship to this? Is it very close to it?

**FERRIS** Yes, it is about 400 to 500 feet straight west along Kellogg.

**DICKGRAFE** I think you can see it in one of those pictures.

**FERRIS** I do not believe so.

**DICKGRAFE** No, it is west.

**MOLLENHAGEN** The railroad track location is here and the sign is located here.

**FOSTER** The other sign that is similar in size and height is to the east.

**FERRIS** Actually it is about 10 feet taller than this sign.

**FOSTER** Anyone else here to speak on this matter? Any other questions? Thank you Mr. Ferris. Since, there are no other persons here to speak; therefore, I will confine comment to the board. Are there comments that the board would like to make?

**MARKHAM** Mr. Chairman as I understand it, we are voting on the variance to increase the height due to the fact of the City action of raising the Kellogg overpass to such a height that it caused a 49 foot sign to be used.

**FOSTER** Yes, that is what created the uniqueness for it.

**MARKHAM** Yes, that is what creates the uniqueness and that is what we are voting on because it has already been determined as a legal non-conforming use.

**DICKGRAFE** What you are voting on is to exempt or vary this particular sign because it is a non-conforming from a provision of a sign code which says if you are a non-conforming sign you can not increase the area or increase the height. If this was a conforming sign, Kirk Schroeder by, by an administrative adjustment could grant this variance. Since it is a non-conforming it comes before this board as a variance to the sign code that says it cannot be increased in height.

**DICKGRAFE** Does that make it clearer?

**MARKHAM** It does help. I just wanted to understand that the only thing that should influence our decision is the elevation of the bypass that is what makes this unique and that is what should guide our decision or our voting

**FOSTER** If I had my choice in the matter, I can see the downtown area being boxed in by these types of signs and I cannot say I favor that as a citizen. Our job here is to follow the rules and be fair to the applicant. We really have no choice but to approve this sign because of the reason you gave Ms. Markham.

**GRAHAM** Speaking to your comment about the site lines to the downtown area by elevating the sign it will actually improve your site line to the downtown area. The elevation that it is set out now it's right above the railway; whereas, if you notice the sign that is adjacent to that and the picture was much higher, at lease from a car driver's perspective, it will then allow you to see into the downtown area only to be interrupted by the pole as opposed to the actual bill board because you can see under the sign.

**FOSTER** So you are saying you can see under the sign?

**GRAHAM** Yes, you can see under the sign.

**FOSTER** Are you ready for a motion?

**MARKHAM** I moved that the board accept the finding of fact as set forth in the secretary's report that all five conditions set out in section 2.12.59 would be the city code as necessary for the granting of a variance has been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

**GREENLEE** Seconded

**Motion carries 4-0 unanimously**

**FOSTER** Next thing we have on the agenda is Herb Shaner for unfinished business.

**SHANER** Herb Shaner, Office of Central Inspections, way back in August of 2003, the school board came before us and asked for a variance for the front building setback from 25 feet down to 14 feet 1 inch and to permit a parking area within the street side setback for Marshall Middle School located at 1510 Payne. Of course, this is a new building rebuilt and it took a while with contractors. It is done and I have measured the setbacks to make sure it was right and they have their sidewalks that you called for and this case can be closed.

**FOSTER** Is there any question of Mr. Shaner?

**SHANER** Another case was March 25, 2005, for a sign on north Kellogg east of Tyler, 8404 W. Kellogg drive, a variance to increase the maximum 3 foot distant allowed between two faces of a sign that triggers a requirement to count both sides of the same sign as two signs instead of a single sign, plus a variance to increase the maximum area of a ground sign from 300 square feet to 486 square feet, permits were pulled and sign instructs have been install and it is okay. That is all that I have today.

**FOSTER** Thank you. Any questions? I like to thank Ms. Dickgrafe for the conflict of interest materials and I hope you send us more. I like to be educated on things.

**FOSTER** Any thing else? Are we going to talk about receiving applicant's materials from last meeting?

**MCNEELY** Last BZA hearing, we discussed applicants bringing materials and handing them out during the meeting. We were instructed to investigate whether we had any policies to prohibit or restrict any materials from being handed out during the meeting. There is nothing in the bylaws and of all the files that we have, there is not an additional policy nor notation of such policy. I am familiar with how we deal with it at the Metropolitan Planning Commission in that anything that is presented at the hearing becomes public record. I do not see any method of

controlling applicants from presenting materials at the time of the BZA hearing that were not previously submitted to staff.

**FOSTER** Sharon do you have any comments?

**DICKGRAFE** Is there an information sheet provided to the applicant?

**MCNEELY** Yes.

**DICKGRAFE** I would recommend that you include verbiage in the mail-out to remind people that all materials that they want reviewed by the board be submitted to the secretary no later than 5 days in time for the mail-out. When do you do your mailing?

**MCNEELY** Mailing would go one week before the meeting. I do not think we could prohibit the applicant from submitting materials at the time of the meeting.

**DICKGRAFE** I do not either but if they are aware that the information will be distributed to the board that would give them an option.

**FOSTER** The applicant will see these instructions, where they do not see our bylaws. I do not want to see anything that staff has not review and I think we need to have a limit.

**MARKHAM** If it is announced on a form that would be good. We more time to absorb the material if it is something meaningful to the case.

**FOSTER** That certainly would help.

**FOSTER** Do we have a meeting next month?

**MCNEELY** I am not certain but we will send out information.

**DICKGRAFE** Your closing date was yesterday.

**ANDERSON** We have one case next month. It is a city case.

**MCNEELY** We do have a case next month, Mr. Foster.

**FOSTER** Okay, Do we have a motion to adjourn?

**GREENLEE** I move to adjourn.

**MARKHAM** Seconded.

Adjourned 2:03pm